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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC 01 221 53996 Office: Vermont Service Center

Date:

IN RE: Petitioner:
Beneficiary:

FEB 28 2003

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(R)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(R)(i)

IN BEHALF OF PETITIONER:

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. In a subsequent motion to reopen, the director affirmed his previous decision. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

On September 24, 2002, counsel filed an appeal on behalf of the petitioner. The regulation at 8 C.F.R. § 103.5(a)(6) states:

Appeal to AAU from Service decision made as a result of a motion. A field office decision made as a result of a motion may be appealed to the AAU only if the original decision was appealable to the AAU.

The regulation at 8 C.F.R. § 214.2(r)(3) states in pertinent part:

Initial evidence. An alien seeking classification as a nonimmigrant religious worker shall present to a United States consular officer, or, if visa exempt, to an immigration officer at a United States port of entry, documentation which establishes to the satisfaction of the consular or immigration officer that the alien will be providing services to a bona fide nonprofit religious organization in the United States or to an affiliated religious organization as defined in paragraph (r)(2) of this section, and that the alien meets the criteria to perform such services.

In this case, the director determined that the Petition for a Nonimmigrant Worker (Form I-129) was filed as an application for either a change of status or extension of stay in the United States. Upon review of the petition on appeal, it was found that the beneficiary resides outside the United States, and therefore, the petition was adjudicated in error. The regulations do not provide for the filing of a petition in the United States if the alien is residing outside the United States and seeking classification as a nonimmigrant religious worker. Such nonimmigrant classification must be sought by presenting the appropriate documentation to a United States consulate abroad. As indicated on the Form I-129, Part 2, at 4a, a petition is not required for an R visa.

ORDER: The appeal is rejected.